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## CHANG WEI INVESTMENT CO LTD & ANOR v. NEO CHING YUEN & ORS

HIGH COURT MALAYA, PULAU PINANG
CHOONG YEOW CHOY J
[CIVIL SUIT NO: PA-22NCvC-69-05-2025]
17 NOVEMBER 2025

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**Abstract** – *In establishing the forum having the most real and substantial connection with the cause of action, courts must consider several factors, including convenience and expense, availability of witnesses, the law governing the transaction, and the places where the parties reside or conduct business. Malaysia is considered the appropriate and convenient forum for the dispute when the majority of the parties involved in the suit are Malaysian citizens and residents, and the impugned conduct and representations, as well as the execution of the relevant instruments occurred substantially within Malaysia. Even if the agreement is governed by and construed in all respects to be in accordance with the laws of another jurisdiction, while a factor to be considered, it does not, in and of itself, displace the jurisdiction of the Malaysian court. The parties, while recognising one jurisdiction as convenient, reserve the liberty to sue in another if appropriate.*

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***CIVIL PROCEDURE:*** *Forum – Forum conveniens – Parties entered into agreement – Dispute arose due to non-compliance with terms of agreement – Commencement of writ action in Malaysian court – Whether Malaysia the appropriate forum for determination of dispute – Whether choice of Cayman Islands law as governing law of agreement rendered Malaysia inappropriate forum – Whether Malaysian court ought to decline to exercise jurisdiction – Whether agreement had exclusive jurisdiction clause – Whether choice of law clause ousted jurisdiction of Malaysian court – Whether parties mostly Malaysian citizens and residents – Whether Malaysia forum with most real and substantial connection to dispute*

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***CIVIL PROCEDURE:*** *Writ – Setting aside – Applications for – Issue of forum non conveniens – Parties entered into agreement – Dispute arose due to non-compliance with terms of agreement – Commencement of writ action in Malaysian court – Whether Malaysia the appropriate forum for determination of dispute – Whether choice of Cayman Islands law as governing law of agreement rendered Malaysia inappropriate forum – Whether Malaysian court ought to decline to exercise jurisdiction – Whether agreement had exclusive jurisdiction clause – Whether choice of law clause ousted jurisdiction of Malaysian court – Whether parties mostly Malaysian citizens and residents – Whether Malaysia forum with most real and substantial connection to dispute – Rules of Court 2012, O. 12, rr. 10(1)(a), 10(1)(g), 10(2) & 10(7)*

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I

The plaintiffs, Taiwanese companies incorporated under the laws of Taiwan, were engaged in the business of capital investment. The first plaintiff and the sixth defendant, a private limited company incorporated in the Cayman Islands, entered into a subscription agreement ('subscription agreement'). Under the terms of the agreement, the first plaintiff subscribed to both redeemable (but non-convertible) preference shares ('RPS') and redeemable and convertible preference shares ('RCPS') in the sixth defendant company. Clause 8.1 of the subscription agreement provided that in the event the proposed listing of the sixth defendant company ('proposed listing') was not completed within three years from the date of the first issuance of the preference shares, the first plaintiff would be entitled to require the sixth defendant to redeem the RPS and RCPS. In conjunction with the subscription agreement, the first to third defendants, Malaysian citizens residing in Penang, Alor Setar and Kuala Lumpur respectively, executed letters of guarantee as guarantors. A property ('Alora Building'), owned by the fifth defendant company, was represented to be unencumbered and intended to serve as collateral or security in favour of the plaintiffs. Pursuant to the said agreement and the accompanying guarantees, the plaintiffs remitted the investment sums to the sixth defendant company. The sixth defendant issued RPS and RCPS to the first plaintiff, thereby rendering the first plaintiff a shareholder of the company. Subsequently, upon the request of the first plaintiff and with the sixth defendant's approval, RPS were issued to the second plaintiff, resulting in both plaintiffs holding preference shares in the sixth defendant. Following the failure of the proposed listing, the present writ action was commenced at the High Court of Malaya at Penang, in respect of the plaintiffs' entitlement to redemption of the said preference shares in accordance with the subscription agreement. The matter had been marked by a series of interlocutory applications filed by both sides. The applications presently before this court, namely those filed in encl. 9 (by the first defendant), encl. 13 (by the fourth and fifth defendants), encl. 17 (by the second and third defendants) and encl. 25 (by the sixth defendant) now fell for determination. These applications were brought pursuant to O. 12 rr. 10(1)(a), (10)(1)(g), 10(2) and 10(7) of the Rules of Court 2012, whereby the defendants sought orders that the plaintiffs' writ be set aside *in limine* and in its entirety. The central issue for determination was whether this court ought to decline to exercise jurisdiction on the ground that Malaysia was not the appropriate or convenient forum for the dispute, and, if so, whether the plaintiffs' writ ought to be set aside.

**Held (dismissing applications):**

**(1)** In addressing the issue as to whether this court ought to decline to exercise jurisdiction on the ground that Malaysia was not the appropriate or convenient forum for the determination of the dispute, it is essential to recognise the distinction between a choice of law clause and a choice of court clause, the latter being also known as a jurisdiction clause. A jurisdiction clause may, in turn, be exclusive or non-exclusive

in nature. An exclusive jurisdiction clause has both a prorogation and derogation effect; it confers jurisdiction upon the chosen forum while excluding all others. It embodies the parties' clear and mutual intention that any dispute shall be resolved solely in the identified forum and generally precludes the courts of other jurisdictions from entertaining the matter. A non-exclusive jurisdiction clause, on the other hand, serves only a prorogation function. While it identifies a preferred forum, it does not preclude the parties from commencing proceedings elsewhere. The parties, while recognising one jurisdiction as convenient, reserve the liberty to sue in another if appropriate. (paras 47-50)

**(2)** Upon examination of the present agreements, there was no exclusive jurisdiction clause comparable to that in *World Triathlon Corporation v. SRS Sports Centre Sdn Bhd.* What was evident, rather, was a choice of law clause, namely cl. 11.7 of the subscription agreement, providing that the agreement 'shall be governed by and construed in accordance with the laws of the Cayman Islands'. A choice of law clause, however, does not itself oust the jurisdiction of this court. (paras 51 & 52)

**(3)** Having considered the totality of the evidence, this court was not persuaded that either Taiwan or the Cayman Islands constituted a more appropriate or convenient forum than Malaysia. On the contrary, the connecting factors pointed strongly to this jurisdiction. The majority of the defendants were Malaysian citizens and residents; the fourth and fifth defendants were Malaysian-incorporated companies; and the principal asset, the Alora Building, was located in Penang. Moreover, the impugned conduct and representations, as well as the execution of the relevant instruments, occurred substantially within Malaysia. (paras 64 & 65)

**(4)** The choice of Cayman Islands law as the governing law of the subscription agreement, while a factor to be considered, did not, in and of itself, displace the jurisdiction of this court or render Malaysia an inappropriate forum. In establishing the forum having the most real and substantial connection with the cause of action, several factors ought to be considered, including convenience and expense, availability of witnesses, the law governing the transaction and the places where the parties reside or conduct business. Malaysia was thus the forum with the closest, most real and substantial connection to the dispute. There were no special or compelling circumstances justifying a stay of proceedings. (paras 66-68)

**Case(s) referred to:**

*American Express Bank Ltd. v. Mohamad Toufic Al-Ozeir & Anor [1995] 1 CLJ 273 SC* ***(refd)***

*Brinkerhoff Maritime Drilling Corp & Anor v. PT Airfast Services Indonesia & Anor [1992] 2 SLR 776* ***(refd)***

*Citibank NA v. Robert [2011] 3 SLR 465* ***(refd)***

*Eng Liat Kiang v. Eng Bak Hern [1995] 3 SLR 97* ***(refd)***
*Gasing Potensi Construction Sdn Bhd v. Hyper Act Marketing Sdn Bhd [2019] CLJU 407; [2019] 1 LNS 407 HC* ***(refd)***
*Globus Shipping & Trading Co (Pte) Ltd v. Taiping Textiles Bhd [1976] CLJU 31; [1976] 1 LNS 31 FC* ***(refd)***
*Hiralal v. Hiralal [2013] NSWSC 984* ***(refd)***
*Oceanic Sun Line Special Shipping Co Inc v. Fay [1988] 165 CLR 197* ***(refd)***
*Oriental Insurance Co Ltd v. Bhavani Stores Pte Ltd [1998] 1 SLR 253* ***(refd)***
*Petrodar Operating Co Ltd v. Nam Fatt Corporation Bhd & Anor [2014] 1 CLJ 18 FC* ***(refd)***
*PT Perusahaan Gas Negara (Persero) TBK v. CRW Joint Operation [2015] SGCA 30* ***(refd)***
*St Pierre And Others v. South American Stores (Gath & Chaves) Ltd And Others [1936] 1 KB 382* ***(refd)***
*The Spiliada; Spiliada Maritime Corporation v. Cansulex Ltd [1987] AC 460; [1986] 3 All ER 843* ***(refd)***
*Tipping v. Tipping BC202318474 (Unreported)* ***(refd)***
*Voth v. Manildra Flour Mills Pty Ltd (1990) 171 CLR 538* ***(refd)***
*Wood & Another v. Fleming [2024] EWHC 2398* ***(refd)***
*World Triathlon Corporation v. SRS Sports Centre Sdn Bhd [2019] 1 CLJ 381 CA* ***(dist)***
*Wynn Resorts (Macau) S.A. v. Wang Yen Liang [2017] 8 CLJ 93 HC* ***(refd)***
*Yong Songhua & Ors v. Basic Venture International Ltd & Ors [2016] CLJU 684; [2016] 1 LNS 684 HC* ***(refd)***
*Zabusky & Ors v. Virgtel Ltd [2021] QSA 17* ***(refd)***

**Legislation referred to:**
Courts of Judicature Act 1964, s. 23(1)(b)
Rules of Court 2012, O. 12 rr. 10(1)(a), (g), (2), (7)

*For the plaintiff - Kumarappan Ramasamy & Mogesh Kumar Kajendra Kumar; M/s Jeeva Partnership*
*For the 1st defendant - Matthew Daniel Boudville & Teh Chiew Yin; M/s Ong and Manecksha*
*For the 2nd & 3rd defendants - Steven Tan Chee Qian & Max Chuah Chern Tee; M/s Chuah Qian & Partners*
*For the 4th & 5th defendants - Siti Nur Amirah Aqilah Adzman; M/s S Ravenesan*
*For the 6th defendant - Muhillan Sivananthan; M/s S Muhillan*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

### Choong Yeow Choy J:

### Introduction

**[1]** The plaintiffs commenced the present writ action against the defendants in May of this year at the High Court of Malaya at Penang. Since then, the matter has been marked by a series of interlocutory applications filed by both sides, with the cause papers now numbering no fewer than 108. The applications thus far include those by the plaintiffs for injunctive relief and discovery, and by the defendants for security for costs.

**[2]** The applications presently before this court, namely, those filed in encl. 9 (by the first defendant), encl. 13 (by the fourth and fifth defendants), encl. 17 (by the second and third defendants), and encl. 25 (by the sixth defendant), now fall for determination. These applications are brought pursuant to O. 12 r. 10(1)(a), 10(1)(g), 10(2), and 10(7) of the Rules of Court 2012, whereby the defendants seek orders that the plaintiffs' writ be set aside *in limine* and in its entirety. The applications raise a threshold issue that goes to the very root of this court's jurisdiction to entertain the action.

**[3]** What renders these applications particularly distinctive is that unlike the more familiar situation in which defendants challenge jurisdiction on the basis that they are sued in a forum where they neither reside nor conduct business, thus invoking the principle of private international law that one ought to be sued at the natural forum, the defendants in this case are sued precisely in the forum where they reside and carry on business. Yet, they now contend that the action ought properly to have been instituted in either Taiwan or the Cayman Islands, notwithstanding considerations of cost or inconvenience. In essence, the defendants' contention is that the High Court of Malaya at Penang is not the appropriate forum for the plaintiffs' claim.

**The Prevailing Issue**

**[4]** The central issue for determination is whether this court ought to decline to exercise jurisdiction on the ground that Malaysia is not the appropriate or convenient forum for the dispute, and, if so, whether the plaintiffs' writ ought to be set aside.

**The Parties**

**[5]** The plaintiffs, Chang Wei Investment Co Ltd and Yi Gui Investment Co Ltd, are Taiwanese companies. These companies were incorporated under the laws of Taiwan, and their registered offices are in Taiwan. They are engaged in the business of capital investment.

**[6]** The first, second and third defendants, namely Neo Ching Yuen, Chia Chin Koon and Neo Ching Hoe, are Malaysian citizens residing in Penang, Alor Setar and Kuala Lumpur respectively. Their addresses for service are in Penang.

**[7]** The fourth and fifth defendants, Right Pristine Manpro Sdn Bhd and RP Dormitory Sdn Bhd are Malaysian companies.

**[8]** The sixth defendant, RP Manpro Group (Cayman) Ltd is a private limited company and/or an exempt company incorporated in the Cayman Islands.

**[9]** The fourth, fifth and sixth defendants have their registered business addresses in Kuala Lumpur.

**[10]** The first defendant is a director and/or shareholder of the fourth, fifth and sixth defendants whilst the second defendant is a director and/or shareholder of the fourth and fifth defendants.

**Salient Background Facts**

**[11]** From the materials before the court, the relevant background may be summarised as follows.

**[12]** The first plaintiff and the sixth defendant entered into a subscription agreement dated 2021 ("the subscription agreement"). Under the terms of the agreement, the first plaintiff subscribed to both redeemable (but non-convertible) preference shares ("RPS") and redeemable and convertible preference shares ("RCPS") in the sixth defendant company, each at a subscription price of RM22,340,000 (equivalent to USD5 million).

**[13]** Clause 8.1 of the subscription agreement provided that in the event the proposed listing of the sixth defendant company ("the proposed listing") was not completed within three years from the date of the first issuance of the preference shares, or if the proposed listing was denied or rejected by the relevant authorities, the first plaintiff would be entitled, upon 30 business days' prior written notice, to require the sixth defendant to redeem the RPS and RCPS at the subscription price together with an additional rate of 3% and 6% per annum respectively.

**[14]** In conjunction with the subscription agreement, the first to third defendants executed letters of guarantee as guarantors. A property known as Alora Building, situated at B Tower, Bayan Point, 19 Medan Kampung Relau, Kampung Seberang Paya, 11900 Bayan Lepas, Penang ("Alora Building"), and owned by the fifth defendant company, was represented to be unencumbered and intended to serve as collateral or security in favour of the plaintiffs.

**[15]** It appears further that the execution of the subscription agreement and the issuance of the preference shares were represented to have been approved by the relevant shareholders, to be consistent with the company's constitution, and to be in compliance with the regulatory requirements of Bank Negara Malaysia and other authorities.

**[16]** Pursuant to the said agreement and the accompanying guarantees, the plaintiffs remitted the investment sums to the sixth defendant company. On 30 December 2021, the sixth defendant issued RPS and RCPS to the first plaintiff, thereby rendering the first plaintiff a shareholder of the company. Subsequently, on 20 June 2023, upon the request of the first plaintiff and with the sixth defendant's approval, RPS were issued to the second plaintiff, resulting in both plaintiffs holding preference shares in the sixth defendant.

**[17]** Following the failure of the proposed listing, the present action was commenced in respect of the plaintiffs' entitlement to redemption of the said preference shares in accordance with the subscription agreement.

**[18]** The crux of the plaintiffs' case is premised on serious claims of fraud, deceit, conspiracy to defraud, fraudulent misrepresentation, conversion, unjust enrichment, and breach of constructive trust.

## The Respective Contentions

*Defendants' Contentions*

**[19]** In support of their respective applications in encls. 9, 13, 17 and 25, the defendants advanced, in substance, the following contentions.

**[20]** The first defendant contended that the present dispute arises out of, or is connected with, the subscription agreement entered into between the first plaintiff and the sixth defendant. Reliance was placed on cl. 11.7 of the said agreement, which provides as follows:

> Governing Law and Jurisdiction
>
> This Agreement shall be governed by and construed in all respects in accordance with the laws of the Cayman Islands.

**[21]** The first defendant further drew attention to cl. 8 of the letter of guarantee executed by the first, second and third defendants, which similarly stipulates that the letter "shall be governed by the laws of the Cayman Islands". On this basis, it was argued that the governing law of both the principal and ancillary agreements is that of the Cayman Islands, and that the present proceedings ought properly to be brought there.

**[22]** The second and third defendants adopted a similar stance. They contended that the parties had, by express agreement, chosen the laws of the Cayman Islands as the governing law, which carries with it an implied jurisdictional element. Reliance was placed primarily on the decision in *World Triathlon Corporation v. SRS Sports Centre Sdn Bhd* [2019] 1 CLJ 381; [2019] 4 MLJ 394 ("*World Triathlon*") in support of the proposition that where parties have expressly agreed upon a governing law, such an agreement should generally be given effect.

**[23]** The second and third defendants further submitted that, even if considerations of convenience were to be taken into account, Taiwan would constitute the more appropriate and commercially logical forum for the resolution of this dispute. It was argued that the plaintiffs' cause of action relates to a proposed initial public offering that was contemplated to take place in Taiwan, thereby underscoring the extraterritorial and foreign character of the dispute.

**[24]** In elaboration, the second and third defendants contended that all material elements of the plaintiffs' claim, including the agreements, the negotiations, the alleged misrepresentations, the intended place of performance, and the *locus* of the purported harm, are foreign and in particular, connected to Taiwan. The factual and legal substratum of the dispute, it was submitted, lies outside Malaysia, and there is therefore no sufficient or justiciable nexus to invoke the jurisdiction of the Malaysian courts.

**[25]** The fourth and fifth defendants similarly argued that Malaysia is not the proper forum for the determination of this dispute. They submitted that the proper and natural forum lies either in the Cayman Islands, in light of the governing law clause, or in Taiwan, given the commercial context and *situs* of the intended public listing. Accordingly, it was contended that this is an appropriate case for the writ and statement of claim to be set aside on the grounds of want of jurisdiction and *forum non conveniens*.

**[26]** The sixth defendant, in its application under encl. 25, advanced the same essential position, submitting that this court lacks jurisdiction to hear and determine the plaintiffs' claim. In the alternative, it contended that the Malaysian courts do not constitute the appropriate or convenient forum for adjudication of the dispute.

**[27]** In addition to *World Triathlon*, the sixth defendant relied on the decisions in *Globus Shipping & Trading Co (Pte) Ltd v. Taiping Textiles Bhd* [1976] CLJU 31; [1976] 1 LNS 31; [1976] 2 MLJ 154 and *Petrodar Operating Co Ltd v. Nam Fatt Corporation Bhd & Anor* [2014] 1 CLJ 18; [2014] 6 MLJ 189, as supporting authorities for the principle that where the parties have expressly chosen a foreign law to govern their contractual relations, the courts of that foreign jurisdiction are generally the proper forum to resolve any disputes arising therefrom.

*Plaintiffs' Contentions*

**[28]** In opposing the defendants' applications in encls. 9, 13, 17 and 25, the plaintiffs advanced, in substance, the following contentions.

**[29]** First, the plaintiffs argued that the defendants had, by their own conduct, submitted to the jurisdiction of this court. In particular, the defendants had filed applications for security for costs under encls. 11, 15 and 23, thereby invoking the jurisdiction of the Malaysian courts.

**[30]** Secondly, the plaintiffs contended that this court has jurisdiction over the defendants as they are Malaysian residents and/or Malaysian-incorporated companies. Although the sixth defendant is a company incorporated in the Cayman Islands, it was said to be a mere "shell" or "dormant" entity used as a vehicle to perpetrate corporate fraud and to induce the plaintiffs to make the investment payments in question.

**[31]** Thirdly, the plaintiffs submitted that the governing law clause in the subscription agreement, namely cl. 11.7, which provides that the agreement is governed by the laws of the Cayman Islands, does not amount to an exclusive jurisdiction clause, and therefore does not oust the jurisdiction of this court.

**[32]** The plaintiffs further relied on several authorities in support of their position that this court is the appropriate forum to hear the dispute. They cited *Yong Songhua & Ors v. Basic Venture International Ltd & Ors* [2016] CLJU 684; [2016] 1 LNS 684; [2017] 8 MLJ 681 ("*Yong Songhua*"), where the High Court dismissed a similar jurisdictional challenge and held that the Malaysian court retained jurisdiction notwithstanding that the impugned agreement involved a foreign company and contained foreign law elements.

**[33]** The plaintiffs also referred to *Gasing Potensi Construction Sdn Bhd v. Hyper Act Marketing Sdn Bhd* [2019] CLJU 407; [2019] 1 LNS 407; [2019] MLJU 249, where the Kuala Lumpur High Court held that considerations of convenience of parties and witnesses rendered the Malaysian court the appropriate forum.

**[34]** The plaintiffs emphasised that the defendants' assets, including the property known as Alora Building, which had been represented to serve as collateral, is situated in Malaysia. They contended that if the action were to proceed in Taiwan or the Cayman Islands, they would face significant difficulties in enforcing any foreign judgment in Malaysia, given the absence of reciprocal enforcement arrangements under the Reciprocal Enforcement of Judgments Act 1958. In this regard, reliance was placed on *Wynn Resorts (Macau) S.A. v. Wang Yen Liang* [2017] 8 CLJ 93; [2017] 11 MLJ 169; *PT Perusahaan Gas Negara (Persero) TBK v. CRW Joint Operation* [2015] SGCA 30; and *Citibank NA v. Robert* [2011] 3 SLR 465, where the courts had accorded weight to the existence of assets within the jurisdiction when considering the issue of the appropriate forum.

**[35]** The plaintiffs also cited comparative foreign authorities, including *Hiralal v. Hiralal* [2013] NSWSC 984 and *Tipping v. Tipping* BC202318474, where the Australian courts declined to stay proceedings on the basis that the defendants possessed substantial assets within the local jurisdiction.

**[36]** The plaintiffs further referred to *Zabusky & Ors v. Virgtel Ltd* [2021] QSA 17, in which the Australian court cautioned that the jurisdiction to stay or dismiss an action on the ground of *forum non conveniens* should be exercised "with great care" or "extreme caution", applying the "clearly inappropriate forum" test.

**[37]** Finally, the plaintiffs relied on the English decision of *Wood & Another v. Fleming* [2024] EWHC 2398 (Ch), where the court reiterated that the onus lies upon the applicant to demonstrate that the proposed alternative forum is "clearly and distinctly" more appropriate for the determination of the dispute, failing which the application must be refused.

## The Apposite Provisions

**[38]** The law and principles governing a defendant's application to set aside a writ on jurisdictional grounds, particularly where the objection concerns the appropriateness of the forum, is well-established.

**[39]** The pertinent provisions of the Rules of Court 2012 relied upon by the defendants provides as follows:

> Dispute as to jurisdiction (O. 12 r. 10)
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> 10. (1) A defendant who intends to dispute the jurisdiction of the court in the proceedings by reason of any irregularity as is mentioned in rule 9 or on any other ground shall enter an appearance and, within the time limited for serving a defence, apply to the court for:
>
> (a) an order setting aside the writ or service of the writ on him;
>
> ...
>
> (g) a declaration that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action;
>
> (2) A defendant who wishes to contend that the court should not assume jurisdiction over the action on the ground that Malaysia is not the proper forum for the dispute shall enter an appearance and, within the time limited for serving a defence, apply to the court for an order to stay the proceedings.
>
> ...
>
> (7) Order 18, rule 2(1) does not apply to any defendant making an application under rule 1, unless the application is dismissed and, in which case, the defendant shall serve his defence within fourteen days after the dismissal of the application or within such other period as the court may order.

**[40]** One must not lose sight of the provisions of s. 23 of the Courts of Judicature Act 1964, which are of relevance to the present matter.

> Civil jurisdiction - general
>
> 23. (1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:
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> (a) the cause of action arose;
>
> (b) the defendant or one of several defendants resides or has his place of business;
>
> (c) the facts on which the proceedings are based exist or are alleged to have occurred; or

(d) any land the ownership of which is disputed is situated, within the local jurisdiction of the court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

(2) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as was vested in it immediately prior to Malaysia Day and such other jurisdiction as may be vested in it by any written law in force within its local jurisdiction.

**The Leading Authorities**

**[41]** The seminal authority on the doctrine of *forum non conveniens* is *The Spiliada; Spiliada Maritime Corporation v. Cansulex Ltd* [1987] AC 460; [1986] 3 All ER 843.

**[42]** In addition to the test articulated by the House of Lords in *The Spiliada,* the Australian High Court has developed a distinct approach in *Oceanic Sun Line Special Shipping Co Inc v. Fay* [1988] 165 CLR 197 ("*Oceanic Sun Line*") and *Voth v. Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538 ("*Voth*"). The latter approach may be traced to the principles earlier expressed in *St Pierre And Others v. South American Stores (Gath & Chaves) Ltd And Others* [1936] 1 KB 382.

**[43]** *The Spiliada* approach has been consistently affirmed in a number of jurisdictions, including Singapore, for instance, in *Brinkerhoff Maritime Drilling Corp & Anor v. PT Airfast Services Indonesia & Anor* [1992] 2 SLR 776; *Eng Liat Kiang v. Eng Bak Hern* [1995] 3 SLR 97; and *Oriental Insurance Co Ltd v. Bhavani Stores Pte Ltd* [1998] 1 SLR 253.

**[44]** In Malaysia, the leading authorities include *American Express Bank Ltd v. Mohamad Toufic Al-Ozeir & Anor* [1995] 1 CLJ 273; [1995] 1 MLJ 160 (as cited by both parties) and *World Triathlon Corporation v. SRS Sports Centre Sdn Bhd* [2019] 1 CLJ 381; [2019] 4 MLJ 394 (as relied upon by the defendants).

**Analysis And Decision Of This Court**

**[45]** In determining the defendants' applications in encls. 9, 13, 17 and 25, this court has examined the relevant contractual provisions, in particular cl. 11.7 of the subscription agreement, the provisions of s. 23(1)(b) of the Courts of Judicature Act 1964, and the applicable principles under O. 12 of the Rules of Court 2012. These have been considered alongside the relevant authorities from both domestic and foreign jurisdictions.

**[46]** It must first be emphasised, though it is self-evident, that this court, being a branch of the High Court of Malaya, is statutorily seized of jurisdiction over the present dispute by virtue of s. 23(1) of the CJA.

**[47]** The question that arises, therefore, is not whether jurisdiction exists, but whether this court ought to decline to exercise it on the ground that Malaysia is not the appropriate or convenient forum for the determination of the dispute.

**[48]** In addressing this issue, it is essential to recognise the distinction between a choice of law clause and a choice of court clause, the latter being also known as a jurisdiction clause. A jurisdiction clause may, in turn, be exclusive or non-exclusive in nature.

**[49]** An exclusive jurisdiction clause has both a prorogation and derogation effect; it confers jurisdiction upon the chosen forum while excluding all others. It embodies the parties' clear and mutual intention that any dispute shall be resolved solely in the identified forum and generally precludes the courts of other jurisdictions from entertaining the matter.

**[50]** A non-exclusive jurisdiction clause, on the other hand, serves only a prorogation function. While it identifies a preferred forum, it does not preclude the parties from commencing proceedings elsewhere. The parties, while recognising one jurisdiction as convenient, reserve the liberty to sue in another if appropriate.

**[51]** It is unnecessary for this court to embark upon an extended discourse on the finer nuances of such clauses. It suffices to note that, upon examination of the present agreements, there is no exclusive jurisdiction clause comparable to that in *World Triathlon.*

**[52]** What is evident, rather, is a choice of law clause, namely cl. 11.7 of the subscription agreement, providing that the agreement "shall be governed by and construed in accordance with the laws of the Cayman Islands". A choice of law clause, however, does not by itself oust the jurisdiction of this court.

**[53]** That said, the defendants are entitled to invoke the doctrine of *forum non conveniens* to persuade this court that the more appropriate forum for adjudication lies in Taiwan and/or the Cayman Islands.

**[54]** The governing principles in this regard are well-settled. Broadly, two approaches are discernible in the common law world: the English approach, as exemplified in *The Spiliada*, and the Australian approach, as seen in *Oceanic Sun Line* and *Voth.*

*The English Approach*

**[55]** *The Spiliada* test involves a two-stage analysis and is conveniently referred to as "the more appropriate forum" test.

**[56]** At the first stage, the onus lies squarely upon the defendants, as the parties challenging this court's jurisdiction, to demonstrate that the courts of Taiwan and/or the Cayman Islands constitute the more appropriate forum. In doing so, they must satisfy this court that those foreign courts:

(i) are the natural *fora* for the dispute;

(ii) are the *fora* with which the action has the closest, most real, and substantial connection; and

(iii) are the *fora* where the case may be tried more suitably for the interests of all parties and the ends of justice.

**[57]** This court must then assess whether the relevant connecting factors link the action more closely with the local forum, namely, the High Court of Malaya at Penang, or with the foreign *fora* in Taiwan and/or the Cayman Islands.

**[58]** If the court concludes that the Malaysian forum is the more appropriate forum, the applications must necessarily fail. Conversely, if the foreign *fora* are found to be the more appropriate, the court may, at this stage, consider granting a stay, but not before proceeding to the second stage of inquiry.

**[59]** At the second stage, the onus shifts to the plaintiffs to show that there exist special circumstances or that the interests of justice nonetheless require the trial to proceed in Malaysia.

*The Australian Approach*

**[60]** The Australian High Court, in *Oceanic Sun Line* and *Voth*, declined to adopt *The Spiliada* formulation, criticising the "more appropriate forum" test on the basis that it requires a domestic court to assess the relative suitability of a foreign court, a task which, it was said, the domestic court is ill-equipped to undertake.

**[61]** Instead, the Australian courts apply what is known as the "clearly inappropriate forum" test. The focus is thus not on whether a foreign court is more appropriate, but on whether the local court is so inappropriate that it would be unjust or oppressive to allow the proceedings to continue before it.

**[62]** Returning to the general approach, the court must take into account a range of relevant factors, including:

(i) convenience and expense;

(ii) availability of witnesses;

(iii) the law governing the transaction;

(iv) the places where the parties reside or carry on business; and

(v) the location of assets which may be relevant to the enforcement of any judgment.

**[63]** No single factor is decisive, and the mere fact that a party may obtain a juridical or procedural advantage in one forum does not, of itself, determine the question.

**[64]** In the present case, having considered the totality of the evidence, the submissions of counsel, and the authorities cited, this court is not persuaded that either Taiwan or the Cayman Islands constitutes a more appropriate or convenient forum than Malaysia.

**[65]** On the contrary, the connecting factors point strongly to this jurisdiction. The majority of the defendants are Malaysian citizens and residents; the fourth and fifth defendants are Malaysian-incorporated companies; and the principal asset, the Alora Building, is located in Penang. Moreover, the impugned conduct and representations, as well as the execution of the relevant instruments, occurred substantially within Malaysia.

**[66]** The choice of Cayman Islands' law as the governing law of the subscription agreement, while a factor to be considered, does not, in and of itself, displace the jurisdiction of this court or render Malaysia an inappropriate forum.

**[67]** In *World Triathlon*, the Court of Appeal reaffirmed that, in establishing the forum having the most real and substantial connection with the cause of action, the court must consider several factors, including convenience and expense, availability of witnesses, the law governing the transaction, and the places where the parties reside or conduct business.

**[68]** Having applied these principles, this court finds that Malaysia is the forum with the closest, most real, and substantial connection to the dispute. There are no special or compelling circumstances justifying a stay of proceedings.

**[69]** Accordingly, this court declines to stay or set aside the plaintiffs' writ. The defendants' applications in encls. 9, 13, 17 and 25 are hereby dismissed, with costs of RM3,000 awarded in respect of each application.